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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1929

No. 275

VESTA BATTERY CORPORATION, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

FILED JULY 30, 1929

(34,406)

(34,406)

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 6, 1929

[fol. 1]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 275

VESTA BATTERY CORPORATION, Petitioner,

vs.

THE UNITED STATES, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The above petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above case on May 6, 1929.

Question Involved

Were the electric storage batteries manufactured and sold by the petitioner during the period in question "parts or accessories" of automobiles within the meaning of Section 900, subsection (3), of the Revenue Acts of 1918 and 1921, and of the regulations issued by the Commissioner of Internal Revenue pursuant thereto?

[fol. 2] The Court below decided the question adversely to the petitioner, dismissing its petition to recover the amount paid as manufacturers excise taxes on the sale of such batteries.

Statutes Involved

The Revenue Act of 1918 (c. 18, 49 Stat. 1057) and the Revenue Act of 1921 (c. 136, 42 Stat. 227) contain identical provisions with respect to the question involved in this case and are as follows:

"Section 900. On and after February 1, 1919, 1918 Act 'January 1, 1922,' 1921 Act there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following per cent of the price for which so sold or leased:

"(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or the sale thereof) three per centum.

"(2) Other automobiles and motor cycles (including tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, five per cenum.

"(3) Tires, inner tubes, parts or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), five per centum."

Regulations 47, promulgated by the Commissioner of Internal Revenue, in pursuance of the authority granted by Congress, provided in part as follows:

"Art. 14. * * * Any article which has reached a state of manufacture wherein it is in itself a component part or accessory, and is of such a nature that it may be [fol. 3] used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer, is subject to tax as a 'part' or 'accessory.'"

* * * * * * *

"Art. 15. * * * any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use and which is primarily adapted only for use as component part of such vehicle."

* * * * * * *

"Articles, however, which ordinarily would be classed as commercial commodities, become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicles."

"Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as such a component part."

* * * * * * *

"Art. 16 * * * any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation."

* * * * * * *

"Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motor cycles are not subject to tax as 'parts' or 'accessories.'"

[fol. 4]

Statement

The facts in this case are fully set out in the Special Findings of Fact made by the court below (R. 20). In brief they are:

The petitioner is a corporation organized under the laws of the state of Illinois, and is now, and has been since 1919, engaged in the manufacture and sale of electric storage batteries (R. 20). During the period from June 3, 1919 to October 20, 1925, the petitioner paid to the respondent, manufacturers excise taxes, penalties and interest in the sum of $376,324.45, on the sale of its batteries prescribed under Section 900, subdivision (3) of the Revenue Acts of 1918 and 1921 (R. 20-22).

On June 24, 1924, the Commissioner of Internal Revenue denied a refund claim for $304,127.25 of these payments, and on February 27, 1926 the Commissioner denied a second refund claim for $73,266.45 (R. 22-23). The petitioner brought

action in the Court of Claims on June 19, 1926, for the refunds claimed (R. 1). Of the total amount paid no refund claim for $50,648.93 was filed within the time prescribed by law. No claim for this amount nor $700 paid in delinquent penalties was made by the petitioner. This leaves a balance claimed of $324,975.52 (R. 22).

Storage batteries of various types and voltages are manufactured and sold to produce electric current utilized for ignition, lighting, and starting service on automobiles; for ignition service in internal-combustion engines, employed on motor boats and for stationary purposes; for the operation of farm lighting plants; for operating telephone exchanges; for operating signal systems; for radios; and for operating railway switches (R. 23).

A technical description of the composition of the batteries manufactured by the petitioner can be found in the Special Finding of the court below (R. 20-24).

The petitioner sold its batteries to dealers and jobbers who were in the business of conducting garages and service stations. The batteries were of the type especially suitable for use on automobiles as replacements and were not primarily adapted for any other purpose or use. They were [fol. 5] advertised for such use. It was not found that plaintiff's batteries were used on the automotive vehicles designated in the taxing statute nor does it appear that petitioner's batteries were not adaptable for all of the uses enumerated above. Neither was it found that the petitioner's batteries were not used for all of such purposes (R. 23-24).

Reasons for Granting the Writ

1. The question presented in this case is now pending in this court on petition for a writ of certiorari in *The Universal Battery Company vs. United States, No. 127*, October Term, 1929. In order to save the rights of the petitioner in the present case pending the court's action on the petition in the Universal Case it is necessary to file the present petition. The same question being involved in this case as that presented in the Universal case, supra, it necessarily follows that substantially all of the reasons advanced in the Universal petition for its being granted are equally applicable here, and the court's disposition of that petition will

be controlling in this. While the distinguishing facts in the two cases may be sufficient to warrant different decisions on the merits, the cases cannot be distinguished as to the reasons for granting the petitions.

Under the circumstance it does not seem necessary to take the Court's time with another brief supporting the petitions for the writs in these cases, and none will be filed unless such a brief is desired by the Court.

Wherefore it is respectfully submitted that this petition should be granted.

George M. Morris, Counsel for Petitioner, 815 Fifteenth Street, Washington, D. C. Of Counsel: Kir-Miller, Baar & Morris.

[fol. 1] IN THE COURT OF CLAIMS OF THE UNITED STATES OF AMERICA

No. F-196

VESTA BATTERY CORPORATION

vs.

THE UNITED STATES

I. PETITION—Filed June 19, 1926

To the Honorable Judges of the United States Court of Claims:

1. Your petitioner, Vesta Battery Corporation, by Harry C. Kinne, its attorney, respectfully represents that it is a corporation organized and doing business under the laws of the State of Illinois, with principal offices in the City of Chicago, County of Cook, and State of Illinois.

2. Your petitioner further represents that Section 900 of the Revenue Act of 1918 provides as follows:

"That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the fol-
[fol. 2] lowing percentages of the price for which so sold or leased—"

"(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

(2) Other automobiles and motorcycles, (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum;

(3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum." (1918 and 1921 Act) "(2) 2½ per centum" (1924 Act).

Your petitioner further represents that Section 1309 of said Revenue Act provides as follows:

"That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act."

3. Your petitioner further represents that the material corresponding provisions of the Revenue Act of 1921 and 1924 and the Regulations of the Commissioner of Internal Revenue are identical, for the purposes of this cause, with the provisions of the Revenue Act of 1918 herein set forth, with the exception of the effective date which in respect to the Act of 1921 is January 1, 1922, and of 1924 is June 2nd, 1924.

[fol. 3] 4. Your petitioner further represents that thereafter the Commissioner of Internal Revenue did promulgate, and the Secretary of the Treasury did approve, the following regulations, the same being what is known as Regulations Number 47, Articles 1, 14, 15, and 16 wherein the effective date of said act is designated and an automobile part or accessory is defined as follows (We have set forth herein only such portions of said regulation as are material to this cause):

"Article 1. Effective date.—The tax is imposed on all articles sold or leased by the manufacturer, producer, or

importer on or after February 25, 1919, even though manufactured, produced, or imported before that date."

"Article 14. Tires, inner tubes, parts, and accessories sold to manufacturers.—The words 'tires, inner tubes, parts, or accessories' shall be understood to embrace only such tires, inner tubes, parts, or accessories as have reached such a stage of manufacture that they constitute articles commonly or commercially known as 'tires, inner tubes, parts, or accessories,' and shall not be understood to embrace raw materials used in the manufacture of such articles. Unvulcanized sheet rubber, liquid rubber vulcanizing cement, and friction fabrics are considered raw materials and are exempt from tax. Any article which has reached a state of manufacture wherein it is in itself a component part or accessory and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer is subject to tax as a 'part or accessory.' * * *"

[fol. 4] "Article 15. Definition of parts.—A 'part' for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, and which is primarily adapted only for use as a component part of such vehicle. The term includes bodies, wheels, engines, springs, axles, radiators, etc. When sold separately a side car and a so-called trailer or 'semi-trailer' so designed that a portion of the load or the weight thereof is carried or borne by the tractor or 'semi-tractor,' are taxable as 'parts.' Mere stock or commercial commodities such as bolts, nuts, washers, screws, etc., though used as components for such vehicles, are not 'parts' within the meaning of subdivision (3). Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicle. Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as such a component part. * * *"

"Article 16. Definition of accessories.—An 'Accessory' for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use [fol. 5] in connection with such vehicle, whether or not essential to its operation. The term 'accessories' includes for example, automobile tops, back and side curtains, horns, speedometers, self-starters, spot lights, shock absorbers, tire pumps, and pressure gauges. Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motorcycles are not subject to tax as 'parts or accessories.' Thus a wrench or other tool of a kind ordinarily sold in hardware stores for general purposes is not subject to tax when sold separately, but if incorporated in an automobile tool kit, is taxable as part of the complete kit. A wrench or other tool of special design or construction primarily adapted for use in connection with automobiles is taxable. If any doubt exists as to the special adaptability of any article, the fact of its sale by the manufacturer to be used with an automobile, or to an automobile accessories dealer, would determine its taxability. Robes, goggles and lunch kits are not subject to tax. Asbestos brake band linings, generator tubing, and radiator hose are not subject to tax unless sold in prepared sizes, lengths, shapes, or with such fittings as make them adapted for use only on or in connection with automobiles. Parts or accessories for automobile trucks, automobile wagons, other automobiles, or motorcycles primarily adapted for use on or in connection therewith when sold for any other purpose are not taxable provided the purchaser files with his order a statement that such parts or accessories are to be used on or in connection with another article of commerce not [fol. 6] enumerated or included in subdivisions (1), (2) or (3) of Section 900. * * *"

5. Your petitioner further represents that Section 3220 of the United States Revised Statutes as amended by the Revenue Acts of 1918, 1921, 1924 and 1926, provides as follows:

"The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; * * *, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this Section."

6. Your petitioner further represents that it is now, and has been for more than five (5) years last past, engaged in the manufacture and sale of storage batteries and that it has paid, involuntarily, the manufacturer's sales tax on all of the batteries so manufactured and sold by it during the term as stated in the claim for refund hereinafter set forth.

7. Your petitioner further represents that on February 7th, 1924, it filed its claim for refund of said taxes, in the sum of Three Hundred Four Thousand One Hundred Twenty-seven and 25/100 ($304,127.25) Dollars, together with interest, a copy of which claim for refund is hereto attached marked Exhibit "A-1," and made a part hereof; that the said amount of Three Hundred Four Thousand One Hundred Twenty-seven and 25/100 ($304,127.25) Dollars [fol. 7] represents the sale tax erroneously collected by the Commissioner of Internal Revenue of the United States from petitioner on storage batteries manufactured and sold by it during the years 1919 to August 31st, 1923, inclusive.

8. Your petitioner further represents that on November 27, 1925, it filed its claim for refund of said taxes, in the sum of Seventy-three Thousand Two Hundred Sixty-six and 45/100 ($73,266.45) Dollars, together with interest, a copy of which claim for refund is hereto attached, marked Exhibit "B-1," and made a part hereof; that the said amount of Seventy-three Thousand Two Hundred Sixty-six and 45/100 ($73,266.45) Dollars represents the sales tax erroneously collected by the Commissioner of Internal Revenue of the United States from Petitioner on storage batteries manufactured and sold by it during the months from Aug. 31 to September, 1923, inclusive.

9. Your petitioner further represents that the total of the two said claims for refund amounts to the sum of Three Hundred Seventy-seven Thousand Three Hundred Ninety-three and 70/100 ($377,393.70) Dollars, and petitioner now claims interest on the refund of said taxes pursuant to the Revenue Act of 1926, hereinafter set forth, from the dates of such payments to the date of final allowance by this Court.

10. Your petitioner further represents that on June 24, 1924, the said entire claim for refund filed with the Commissioner of Internal Revenue on February 7th, 1924, for [fol. 8] Three Hundred Four Thousand One Hundred Twenty-seven and 25/100 ($304,127.25) Dollars was rejected by said Commissioner of Internal Revenue.

11. Your petitioner further represents that on February 27, 1926, the said entire claim for refund filed with the Commissioner of Internal Revenue on November 27, 1925, for Seventy-three Thousand Two Hundred Sixty-six and 45/100 ($73,266.45) Dollars was rejected by said Commissioner of Internal Revenue.

12. Your petitioner further represents that it is now the sole owner of said claims for refund in the total sum of Three Hundred Seventy-seven Thousand and Three Hundred Ninety-three and 70/100 ($377,393.70) Dollars, and that said claims have never been assigned to any other persons whomsoever.

13. Your petitioner further represents that said batteries so manufactured and sold by it are not now, and never were "primarily adapted" for use only in automobiles as provided in Section 900, (1), (2) or (3) of said Revenue Act of 1918 and 1921; and Section 600 of the Revenue Act of 1924; that on the contrary said storage batteries are now, and were always used for the following, as well as many other purposes:

For radio, for farm or cottage lighting plants, for propelling railway, mail and baggage trucks, for propelling motor boats, in connection with stationary engines, tractor engines, marine engines, for lighting railway coaches, for lighting and starting gasoline railway coaches, in connection with door bells, telephones and telegraphs.

[fol. 9] 14. Your petitioner further represents that by reason of the facts herein set forth the storage batteries, so manufactured by it, were and are, commercial commodities and were not, and are not now "primarily adapted only" for use in automobiles; that they have not reached, and none of them ever did reach, such a stage of manufacture that they are, or were, in themselves component parts of automobiles as provided in said Revenue Act and Regulations.

15. Your petitioner, therefore, states that it is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs.

16. Your petitioner further represents that it has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government and that it believes the facts as herein set forth to be true.

17. Section 1117 of the Revenue Act of 1926 provides as follows:

"(b) In any judgment of any court rendered after the enactment of the Revenue Act of 1926 (whether against the United States, a collector or deputy collector of Internal Revenue, a former collector or deputy collector, or the personal representative in case of death) for any internal-revenue tax erroneously or illegally collected or assessed, or for any penalty collected without authority or for any sum which was excessive or in any manner wrongfully collected under the internal-revenue laws, interest shall be allowed at the rate of 6 per centum per an-
[fol. 10] num upon the amount of such tax, penalty, or sum, from the date of the payment or collection thereof to the date of entry of such judgment, or, if such judgment is reviewed by an appellate court, to the date of entry of final judgment."

18. Your petitioner, therefore, prays that its claims for taxes paid by it on storage batteries, in the sum of Three Hundred Seventy-seven Thousand Three Hundred and Ninety-three and 70/100 ($377,393.70) Dollars, with interest

thereon, pursuant to Section 1117 of the 1926 Revenue Act may be allowed against the United States by this Honorable Court, and that such other orders may be entered herein as may be just and equitable.

Vesta Battery Corporation, by Ward S. Perry, Pres.
(Corporate Seal.)

Duly sworn to by Ward S. Perry. Jurat omitted in printing.

[fol. 11] PLAINTIFF'S EXHIBIT "A-1" TO PETITION

(On Federal Excise Tax Refund Form)

Claim for Excise Taxes

(X) Refund of Taxes Illegally Collected

STATE OF ILLINOIS,
County of Cook, ss:

Vesta Battery Corporation (Name of taxpayer or purchaser of stamps).

2100 Indiana Avenue (Residence—give street and number as well as city or town and State).

Chicago, Illinois (Business address).

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete.

1. Business in which engaged: Batteries and Accessories. Period from Feb. 26, 1919, to Aug. 31, 1923.

2. Character of assessment or tax: Excise Tax paid on Batteries. (State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps purchased per schedule attached: $304,127.25.

4. Reduction of Tax Liability requested (Income and Profits Tax): ——.

[fol. 12] 5. Amount to be abated: ——.

6. Amount to be refunded (or such greater amount as is legally refundable): $304,127.25.

7. Dates of payment (see Collector's receipts or indorsements of canceled checks): ——. (If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: ——.

9. District in which unpaid assessment appears: ——.

10. Amount of overpayment claimed as credit: ——.

11. Unpaid assessment against which credit is asked, period from —— —, ——, to —— —, ——: ——.

Deponent verily believes that this application should be allowed for the following reasons:

The amount of this claim represents Excise Tax paid under Section 900 Title IX of the Revenue Acts of 1918 and 1921, upon the sale of electric storage batteries to persons other than Manufacturers of Automobiles. Brief in support of this Claim was filed with the Commissioner of Internal Revenue under date of December 31, 1923.

[fol. 13] Vesta Battery Corporation, Chicago, Illinois

Total Excise Tax Paid on Batteries Sold from February 26, 1919, to August 31, 1923

Month	Year 1919	1920	1921	1922	1923
January	.....	5,070.09	3,362.62	3,592.11	4,043.59
February	547.73	4,696.26	4,730.94	5,766.18	3,803.95
March	5,319.89	8,026.98	7,796.06	6,292.50	7,177.27
April	7,286.16	7,657.70	8,751.45	6,214.63	5,497.09
May	5,200.26	11,994.20	4,317.68	5,485.95	3,233.34
June	4,314.77	6,904.02	4,016.34	4,114.91	2,760.68
July	3,689.60	5,219.11	4,341.42	3,887.60	2,958.08
August	5,322.49	5,521.60	7,708.05	5,377.61	4,352.14
September	6,800.36	5,905.35	8,347.68	6,021.97	.....
October	7,472.07	6,013.84	7,615.00	5,988.64	.....
November	6,464.95	4,323.53	4,172.86	6,663.47	.....
December	7,599.89	4,191.90	3,871.61	5,580.43	.....
Totals	$60,018.07	$76,254.58	$69,031.71	$64,986.00	$33,836.89

Year	Amount
1919	$60,018.07
1920	76,254.58
1921	69,031.71
1922	64,986.00
1923	33,836.89
Total	$304,127.25

(Signed) Vesta Battery Corporation, by —— ——.

[fol. 14] PLAINTIFF'S EXHIBIT "B-1" TO PETITION

(On Federal Excise Tax Refund Form)

Claim for Excise Taxes

(X) Refund of Taxes Illegally Collected

STATE OF ILLINOIS,
County of Cook, ss:

Vesta Battery Corporation (Name of taxpayer or purchaser of stamps).

2100 Indiana Avenue (Residence—give street and number as well as city or town and State).

Harry C. Kinne, Attorney-at-law, 160 N. LaSalle St., Chicago, Illinois (Business address).

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged: Manufacture of batteries and parts. Period from Aug. 30, 1923, to Sep. 30, 1925.

2. Character of assessment or tax: (Manufacturer's Excise Tax. (State for or upon what the tax was assessed or the stamps affixed.)

3. Amount of assessment or stamps purchased: ——.

4. Reduction of Tax Liability requested: (Income and Profits Tax.)

5. Amount to be abated: ——.

[fol. 15] 6. Amount to be refunded (or such greater amount as is legally refundable): $73,266.45.

7. Dates of payment (see Collector's receipts or indorsements of canceled checks): ——. (If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: ——.

9. District in which unpaid assessment appears: ——.

10. Amount of overpayment claimed as credit: ——

11. Unpaid assessment against which credit is asked, period from ——— —, ———, to ——— —, ———: ———.

Deponent verily believes that this application should be allowed for the following reasons:

That said amount, $73,266.45, above indicated, was paid on sales of storage batteries on August 30th, 1923, and on or about the last day of each and every succeeding month thereafter, to and including September 30, 1925, for the period indicated in the above places provided for that purpose; that the said batteries are commercial commodities and are not in themselves component parts or accessories of automobiles within the meaning of Section 900 of the Revenue Acts of 1918 and 1921 or Section 600 of the Revenue Act of 1924; that said Sections of said Revenue Acts did not levy a tax on the manufacture of storage batteries, and that said storage batteries are not subject to tax under said Sections of said Revenue Acts. There are attached hereto the following papers: (1) Brief in support of claim (2) Statement of tax paid (3) Power of Attorney (4) Two affidavits and letter.

[fol. 16]

Excise Tax Paid

Sales period	Date paid	On batteries	On lamps & generators	Total
Sept. 1923	May 23, 1924	4,948.57	.....	4,948.57
	Oct. 20, 1923	.....	90.43	90.43
Oct. "	May 23, 1924	6,182.36	.....	6,182.36
	Nov. 27, 1923	.....	189.80	189.80
Nov. "	May 23, 1924	8,634.50	.....	8,634.50
	Dec. 27, 1923	.....	162.56	162.56
Dec. "	Feb. 2, 1924	4,312.61	.....	4,312.61
	Jan. 29, "	.....	89.40	89.40
Jan. 1924	Feb. 27, "	5,652.61	55.52	5,708.13
Feb. "	Mar. 25, "	5,877.37	44.20	5,921.57
Mar. "	Apr. 28, "	4,539.27	84.43	4,623.70
Apr. "	May 26, "	2,627.80	171.14	2,798.94
May "	June 28, "	2,044.20	106.38	2,150.58
June "	July 29, "	1,699.66	55.73	1,755.39
July "	Aug. 27, "	1,356.57	34.24	1,390.81
Aug. "	Sep. 24. "	1,733.04	34.44	1,767.48
Sep. "	Oct. 29, "	2,310.21	33.75	2,343.96
Oct. "	Nov. 25, "	2,315.10	52.43	2,367.53
Nov. "	Dec. 26, "	2,181.53	31.35	2,212.88
[fol. 17]				
Dec. "	Jan. 29, 1925	2,966.54	25.97	2,992.51
Jan. 1925	Feb. 28. "	2,432.96	24.94	2,457.90
Feb. "	Mar. 28, "	1,088.72	22.37	1,111.09

Mar.	"				
Apr.	"	Apr. 27, "	1,621.85	26.68	1,648.53
May	"	May 25, "	1,546.63	45.65	1,592.28
June	"	June 26, "	1,083.93	60.18	1,144.11
July	"	July 29, "	1,244.96	37.25	1,282.21
Aug.	"	Aug. 25, "	1,341.07	42.31	1,388.38
Sep.	"	Sep. 29, "	1,725.28	50.25	1,775.53
		Oct. 30, "	1,799.11	50.01	1,849.12
Total			73,266.45	1,621.41	74,887.86

(Signed) Vesta Battery Corporation. (Signed) F. J. Freitag, Treas.

Sworn to and subscribed before me this 27th day of November, 1925. (Signed) J. D. Millar, Notary Public.

[fol. 18] II. General Traverse—Filed August 18, 1926

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

R. C. W.

III. History of Proceedings

On December 3, 1928, the court issued a rule to show cause, returnable January 7, 1929, why the the case should not be dismissed.

On January 7, 1929, the plaintiff was ordered to file answer to rule to show cause.

On January 15, 1929, the plaintiff was allowed to file an additional brief.

On February 4, 1929, on motion made therefor, the plaintiff was allowed to argue the rule to show cause.

On March 19, 1929, the rule to show cause was argued and submitted by Mr. George M. Morris, for the plaintiff, and by Mr. Ralph C. Williamson, for the defendant.

On April 1, 1929, the court entered the following order on the rule to show cause:

Order

This case came on to be heard on a Rule to Show Cause why the petition herein should not be dismissed; on the plaintiff's answer thereto, and the defendant's reply to the plaintiff's answer; and it appearing

That on the call of the General Docket December 3, 1928, the Rule in this case was issued on motion of the defendant's attorney upon the ground that this case was controlled by the decision in the case of the Cole Storage Battery Com-

[fol. 19] pany, No. D-784, and that its hearing had been deferred with the consent of the court and the parties to await the decision in said Cole Storage Battery Company case; and

That after due notice the plaintiff appeared and filed its written answer to the said Rule, to which answer the defendant filed its written reply; and

That after the plaintiff filed its answer to said Rule the case was placed on the Calendar of the court and in due course came on for hearing and was submitted after argument.

Now, therefore, upon due consideration the court, being of the opinion that this case is controlled by the said Cole Storage Battery Company case, Orders this 1st day of April, 1929, that the said Rule be and it is made absolute, and the plaintiff's petition is dismissed.

On April 20, 1929, the plaintiff filed a motion for special findings of fact.

Said motion was allowed, and the court, on May 6, 1929, filed the following special findings of fact and conclusion of law:

[fol. 20] IV. **Special Findings of Fact and Conclusion of Law**—Filed May 6, 1929

This case having been heard by the Court of Claims, the Court, upon the report of a Commissioner and the evidence, makes the following

SPECIAL FINDINGS OF FACT

I

The plaintiff is a corporation duly incorporated under the laws of the State of Illinois, with its principal place of business in Chicago, in the State of Illinois, and is now, and has been since 1919, engaged in the manufacture of storage batteries.

II

The plaintiff, under the provisions of section 900, subdivision 3, of the revenue acts of 1918 and 1921, paid the United States manufacturer's excise taxes, penalties, and interest on storage batteries, storage battery parts, lamps, and generators in the amounts and on the dates as follows:

Part A

Period for which paid	Date of receipt	Amount of receipt	Amount paid on storage batteries	Amount paid on lamps and generators	Amount paid on battery parts
January, 1919					
February, 1919					
March, 1919	June 3, 1919	$5,472.77	$5,472.77		
Do	Jan. 9, 1920	979.24			$979.24
Do	Sept. 8, 1920	111.14			111.14
April, 1919	June 3, 1919	6,810.84	6,810.84		
Do	Jan. 9, 1920	1,783.26			1,783.26
Do	Sept. 8, 1920	202.40			202.40
May, 1919	July 10, 1919	5,117.12	5,056.20		60.92
Do	Jan. 9, 1920	1,422.34			1,422.34
Do	Sept. 8, 1920	146.50			146.50
June, 1919	Aug. 5, 1919	4,026.72	4,026.72		
Do	Jan. 9, 1920	1,098.55			1,098.55
Do	Sept. 8, 1920	113.15			113.15
July, 1919	Sept. 5, 1919	3,574.10	3,574.10		
Do	Jan. 9, 1920	984.10			984.10
Do	Sept. 8, 1920	91.03			91.03
[fol. 21] August, 1919	Oct. 8, 1919	5,165.24	5,165.24		
Do	Jan. 9, 1920	1,489.96			1,489.96
Do	Sept. 8, 1920	122.18			122.18

September, 1919	Nov.	4, 1919	6,606.04	6,606.04	.....	.....
Do	Jan.	9, 1920	1,115.98	.....	.....	1,115.98
Do	Sept.	8, 1920	79.80	.....	.....	79.80
October, 1919	Dec.	4, 1919	7,675.89	7,472.07	203.82	.....
Do	Jan.	9, 1920	1,490.26	.....	.....	1,490.26
Do	Sept.	8, 1920	90.91	.....	.....	90.91
November, 1919	Jan.	8, 1920	7,538.83	6,464.95	365.32	708.56
Total	.....	.....	63,308.35	50,648.93	569.14	12,090.28
December, 1920	Feb.	9, 1920	9,073.75	7,599.89	819.55	654.31
January, 1920	Mar.	13, 1920	7,456.41	6,070.09	471.86	914.46
February, 1920	Apr.	7, 1920	6,300.30	4,696.26	785.20	818.84
March, 1920	May	18, 1920	9,857.71	8,026.98	717.31	1,113.42
April, 1920	June	17, 1920	9,200.54	7,657.70	203.05	1,339.79
May, 1920	July	10, 1920	13,857.96	11,994.20	434.47	1,429.29
June, 1920	Aug.	13, 1920	8,593.34	6,904.02	580.46	1,108.86
July, 1920	Sept.	14, 1920	6,794.02	5,219.11	684.85	890.06
August, 1920	Oct.	16, 1920	6,578.69	5,251.60	611.85	715.24
September, 1920	Nov.	9, 1920	7,100.69	5,905.35	512.62	682.72
Octobe-, 1920	Dec.	7, 1920	7,227.17	6,013.84	288.31	925.02
Nover..ber, 1920	Jan.	12, 1921	5,905.23	4,323.53	618.18	963.52
December, 1920	Feb.	9, 1921	5,270.5o	4,191.90	340.15	738.33
January, 1921	Mar.	14, 1921	4,023.32	3,362.62	229.37	431.33

Part A—Continued

Period for which paid	Date of receipt	Amount of receipt	Amount paid on storage batteries	Amount paid on lamps and generators	Amount paid on battery parts
February, 1921	Apr. 15, 1921	5,680.52	4,730.94	285.99	663.59
March, 1921	May 4, 1921	9,107.19	7,796.06	672.51	638.62
April, 1921	June 15, 1921	10,008.56	8,751.45	548.76	708.35
May, 1921	July 13, 1921	5,011.53	4,317.68	369.95	223.90
June, 1921	Aug. 11, 1921	4,889.09	4,016.34	398.72	474.03
July, 1921	Sept. 7, 1921	5,096.97	4,341.42	433.38	322.17
August, 1921	Oct. 5, 1921	8,561.77	7,708.05	372.56	481.16
September, 1921	Nov. 9, 1921	9,396.69	8,347.68	501.35	547.66
October, 1921	Dec. 7, 1921	8,771.39	7,615.00	273.73	882.66
November, 1921	Jan. 6, 1922	4,995.57	4,172.86	319.16	503.55
December, 1921	Feb. 2, 1922	4,507.48	3,871.61	305.31	330.56
January, 1922	Mar. 3, 1922	3,969.88	3,592.11	89.55	288.22
February, 1922	Apr. 18, 1922	6,302.05	5,766.18	234.59	301.28
March, 1922	Apr. 30, 1922	6,427.59	6,292.50	135.09	.....
April, 1922	May 21, 1922	6,489.30	6,214.63	274.67	.....
May, 1922	June 30, 1922	5,636.74	5,485.95	150.79	.....
June, 1922	July 31, 1922	4,302.64	4,114.91	187.73	.....
July, 1922	Aug. 31, 1922	4,578.99	3,887.60	691.39	.....
August, 1922	Sept. 30, 1922	5,711.57	5,377.61	333.96	.....
September, 1922	Oct. 31, 1922	6,223.77	6,021.97	201.80	.....
October, 1922	Nov. 29, 1922	6,222.30	5,988.64	233.66	.....

November, 1922	Dec. 29, 1922	5,568.98	5,379.59	189.39	
Do	do	1,283.88	1,283.88		
December, 1922	Jan. 20, 1923	5,772.17	5,580.43	191.74	
January, 1923	Feb. 28, 1923	4,132.80	4,043.59	89.21	
February, 1923	Mar. 30, 1923	3,879.91	3,803.95	75.96	
March, 1923	Apr. 28, 1923	7,407.50	7,177.27	230.23	
April, 1923	May 31, 1923	5,801.46	5,497.09	304.37	
May, 1923	June 30, 1923	3,620.97	3,233.34	387.63	
June, 1923	July 27, 1923	3,152.39	2,760.68	391.71	
July, 1923	Aug. 29, 1923	3,208.28	2,968.83	239.45	
August, 1923	Sept. 28, 1923	4,575.32	4,352.14	223.18	
Total of Claim Feb. 7, 1924		350,843.11	302,358.00	17,203.89	31,281.22

Part B

September, 1923	May 23, 1924	$4,948.57	$4,948.57		
Do	Oct. 20, 1923	90.43		$90.43	
October, 1923	May 23, 1924	6,182.36	6,182.36		
Do	Nov. 27, 1923	189.80		189.80	
November, 1923	May 23, 1924	8,634.50	8,634.50		
Do	Dec. 27, 1923	162.56		162.56	
December, 1923	Feb. 2, 1924	4,312.61	4,312.61		
Do	Jan. 29, 1924	89.40		89.40	

Part B—Continued

Period for which paid	Date of receipt	Amount of receipt	Amount paid on storage batteries	Amount paid on lamps and generators	Amount paid on battery parts
January, 1924	Feb. 27, 1924	5,708.13	5,652.61	55.52	.....
February, 1924	Mar. 25, 1924	5,921.57	5,877.37	44.20	.....
March, 1924	Apr. 28, 1924	4,623.70	4,539.27	84.43	.....
April, 1924	May 26, 1924	2,798.94	2,627.80	171.14	.....
	May 28, 1924	700.00	700.00	.....	.....
[fol. 22] May, 1924	June 28, 1924	2,150.58	2,044.20	106.38	.....
June, 1924	July 29, 1924	1,755.39	1,699.66	55.73	.....
July, 1924	Aug. 27, 1924	1,390.81	1,356.57	34.24	.....
August, 1924	Sept. 24, 1924	1,767.48	1,733.04	34.44	.....
September, 1924	Oct. 29, 1924	2,343.96	2,310.21	33.75	.....
October, 1924	Nov. 25, 1924	2,367.53	2,315.10	52.43	.....
November, 1924	Dec. 26, 1924	2,212.88	2,181.53	31.35	.....
December, 1924	Jan. 29, 1925	2,992.51	2,966.54	25.97	.....
January, 1925	Feb. 28, 1925	2,457.90	2,432.96	24.94	.....
February, 1925	Mar. 28, 1925	1,111.09	1,088.72	22.37	.....
March, 1925	Apr. 27, 1925	1,648.53	1,621.85	26.68	.....
April, 1925	May 25, 1925	1,592.28	1,546.63	45.65	.....
May, 1925	June 26, 1925	1,144.11	1,083.93	60.18	.....
June, 1925	July 29, 1925	1,282.21	1,244.96	37.25	.....
July, 1925	Aug. 25, 1925	1,383.38	1,341.07	42.31	.....

August, 1925	Sept. 29, 1925	1,775.53	1,725.28	50.25	.....
September, 1925	Oct. 20, 1925	1,849.12	1,799.11	50.01	.....
Total of claim filed Nov. 18, 1925	.....	75,587.86	73,966.45	1,621.41	.....

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Summary of Parts A and B

Part A	$350,843.11	$302,358.00	$17,203.89	$31,281.22
Part B	75,587.86	73,966.45	1,621.41	.....
Total	426,430.97	376,324.45	18,825.30	31,281.22
Amount paid previous to January, 1920	.....	50,648.93	.....	.....
		325,675.52		
Amount paid on May 28, 1924, for penalties and interest (no claim made for recovery)	.....	700.00		
		324,975.52		

III

Of the total amount of $376,324.45, taxes paid on storage batteries, $50,648.93 was paid between June 3, 1919, and January 8, 1920, for which no claim of refund was filed within four years, and the plaintiff waives all claim thereto, which leaves a balance of $325,675.52. Of this amount, the sum of $700.00 was paid on May 28, 1924, for penalties and interest which were imposed for delay in payment of taxes on battery parts and no claim is made for the recovery of this amount. The balance, $324,975.52, represents the amount paid as taxes on storage batteries for which claims of refund were made.

IV

The plaintiff filed a claim for refund on May 19, 1922, of taxes paid for battery parts sold separately, and the sum of $31,281.22 was repaid to plaintiff with interest on December 26, 1922, and January 2, 1923. This refund related to taxes paid prior to May 19, 1922. The plaintiff waived claim for refund of $653.51 paid on battery parts.

V

On February 7, 1924, plaintiff filed with the Commissioner of Internal Revenue claim for refund in the sum of $304,127.25, which claim was rejected by the Commissioner on June 24, 1924.

[fol. 23] On November 27, 1925, plaintiff filed with the Commissioner of Internal Revenue claim for refund in the sum of $73,266.45 and said claim for refund was rejected by the Commissioner on February 27, 1926.

No claim is made herein for a refund of taxes paid on lamps and generators.

VI

A storage battery is composed of a container (a glass or rubber jar, a positive and negative group of plates immersed in an electrolyte solution (which may be acid or alkaline, depending on the metals used), usually dilute acid, a group of which plates is usually made of oxide or dioxide of lead and the other group of gray oxide of lead. The oxides usually are spread over a lead frame or grid to

form a plate. The dioxide and acid are decomposed and form a new sulphate with the other plate. Small wooden partitions or squares, called separators, are inserted between the plates to keep them from touching, buckling together, or shortening. The negative plates are connected together, as are also the positive plates. A top is put on the jar and sealed over with sealing wax, leaving a terminal post exposed. A cell is composed of a certain number of positive and negative plates. A battery may consist of one or more cells, usually of three to six cells. One cell will produce an electric current of two volts. There is no particular shape for a storage battery. Sometimes storage batteries are oblong, sometimes square, depending on whether the cells are put in end to end or with flat sides together. A storage battery may consist of any number of cells, depending upon the voltage desired.

VII

Storage batteries of various types and voltages are manufactured and sold to produce electric current utilized for ignition, lighting, and starting service on automobiles; for ignition service in internal-combustion engines, employed on motor boats and for stationary purposes; for the operation of farm lighting plants; for operating telephone exchanges; for operating signal systems; for radios; and for operating railway switches.

VIII

The plaintiff sold its batteries principally to dealers and jobbers, who were in the business of conducting garages and service stations. The batteries manufactured and sold by plaintiff, which were the subject matter of the taxes in question in this case, were of the type especially suitable for use on automobiles as replacements for the batteries forming a part of the original equipment of such cars and were not adapted to any other primary purpose or use. Plaintiff issued a catalogue in which these batteries were advertised for use in automobiles. The catalogue stated, "A Vesta Battery for every car," and prospective purchasers were requested in ordering batteries to specify the kind of automobile for which the battery was required. Fifteen types of battery were manufactured and sold by

the plaintiff, and any one of them could be used in some automobile.

[fol. 24] CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff for the cost of printing the record in this cause, the amount thereof to be ascertained by the clerk and collected by him.

See case of Cole Storage Battery Co. v. United States, 65 C. Cls. 164.

[fol. 25] V. Judgment

At a Court of Claims held in the City of Washington on the 6th day of of May, A. D., 1929, judgment was ordered to be entered as follows:

Upon the special findings of fact which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover and its petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this cause the amount thereof to be ascertained by the clerk and collected by him according to law, which amount is found to be $119.54.

See case of Cole Storage Battery Co. v. United States, 65 C. Cls., 164.

[fol. 26] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,406. Court of Claims Term No. 275. Vesta Battery Corporation, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed July 30, 1929. File No. 34,406.